IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 339 OF 2000

IN

WRIT PETITION NO. 500 OF 2000

Brihanmumbai Municipal Corporation)
a Statutory Authority duly constituted)
under the provisions of the Mumbai)
Municipal Corporation Act, 1888 through)
the General Manager, the Brihanmumbai)
Electric Supply and Transport Undertaking
having his office at BEST Bhavan,)
BEST Marg, Mumbai-400 001.) .. Appellant

V/s

1. Dnyandeo Dhondu Shingote)
Ex. Bus Driver No.85076 of Kurla)
Depot, C/o BEST Workers Union,)
42, Kennedy Bridge,)
Mumbai-400 004.)

2. The General Secretary,)
BEST Workers' Union,)
42, Kennedy Bridge,)
Mumbai-400 004.) .. Respondents

Mr.S.K. Talsania, Senior Advocate with Mr.J.S. Saluja i/b M.V. Kini & Co. for the appellant.

Mrs. Neeta Karnik for the respondents.

CORAM : R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATE : 14TH JUNE 2007

JUDGMENT: (Per D.G. Karnik, J.)

1. By this appeal, the appellant - Brihanmumbai Municipal Corporation takes exception to the judgment

and order dated 6th March 2000 passed by a learned Single Judge in Writ Petition No.500 of 2000. By that judgment, the learned Single Judge declined to interfere in the judgment and order dated 15th November 1999 of the Industrial Court, Mumbai dismissing the appellant's appeal against the judgment and order dated 27th June 1997 passed by the Labour Court, Mumbai directing reinstatement in service of the respondent no.1 with 50% back wages.

2. The appellant provides transport service for the commuters in Mumbai. The respondent no.1 was employed as a driver and assigned duty to drive one of the buses. On 4th August 1994, the respondent no.1 was driving a bus on route no.507/10. At about 7.30 p.m. when the bus reached near Mohite Patil Nagar, an Assistant Traffic Officer of the appellant noticed that the bus was not driven properly and with lights off. He, therefore, asked the inspector to stop the bus, who halted the bus. The Assistant Traffic Officer noticed that the respondent no.1 was driving the bus in a drunken condition. He also felt smell of alcohol from the mouth of the bus driver. Necessary medical examination was carried out and the medical officer reported that the respondent no.1 had consumed alcohol, his eyes were red and unsteady and speech was slurred and irrelevant. In the domestic enquiry, the respondent

no.1 was found guilty and an order of dismissal from service was passed on 19th August 1994.

3. Two internal appeals filed by the respondent no.2 Union on behalf of the respondent no.1 failed. Thereupon, 2nd respondent filed an application before the Labour Court under sections 78 and 79 of the Bombay Industrial Relations Act, 1946 challenging the order of dismissal of the 1st respondent. After considering the evidence adduced before it, the Labour Court held that the charges against the respondent no.1 were proved. However, taking into consideration that it was a first misconduct committed by him during the last 10 years service, the Labour Court felt that the respondent no.1 should have been given an opportunity to reform himself. The Labour Court further held that the punishment awarded to the respondent no.1 was shockingly disproportionate to the misconduct and punishment of reduction in grade and stoppage of increment would have sufficed. In this view of the matter, the Labour Court allowed the application and directed reinstatement of the respondent no.1 into service with 50% back wages.

4. On appeal, the Industrial Court held that considering the evidence on record and past record of the respondent no.1, which was spotless except the incident in question, the Labour Court was right in

interfering with the quantum of punishment. It further held the refusal of 50% of the back wages itself was a sufficient punishment to the respondent no.1. The appellate court therefore was of the view that no interference was required in the appeal and accordingly dismissed the appeal.

5. In Writ Petition No.500 of 2000 filed by the appellant, a learned Single Judge of this Court held that the finding of the courts below that the past service record of the respondent no.1 was unblemished could not be faulted. He also held that that was not a fit case for the court to exercise its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India to interfere with the quantum of punishment which was reduced by the courts below. In this view of the matter, the learned Single Judge dismissed the writ petition.

6. Mr.Talsania, learned senior advocate appearing for the appellant, submitted that the Labour Court erred in interfering with the quantum of punishment awarded to the respondent no.1 on the ground that it was disproportionate to the proved misconduct. He submitted that the respondent no.1 was engaged as a driver; and driving a bus in a drunken condition constituted a grave misconduct. By driving the bus while he was under

influence of alcohol, the respondent no.1 not only endangered the lives and safety of inmates of the bus, but also endangered the lives and safety of the persons on the road either as pedestrians or in other vehicles. He further submitted that the respondent no.1 was found to be driving the bus in an improper manner by the traffic officer who had to halt the bus. Driving a bus rashly and without lights after the dark and in a drunken state amounted to gross misconduct, which deserved any leniency. He further submitted that once the misconduct, which, according to him was very grave, was proved, the Labour Court could not have interfered with the quantum of punishment on the ground that it was the first proved misconduct. He submitted that the quantum of punishment was entirely in the discretion of the management. Taking into consideration gravity of the misconduct, the punishment was proper and in any case was not shockingly disproportionate. In view of this, the Labour Court ought not to have interfered in the quantum of punishment. Learned counsel also invited our attention to the recent decisions of the Supreme Court rendered in:

(i) V. Ramana v. A.P. SRTC, reported in (2005) 7 SCC 338

(ii) Bharat Forge Co. v. Uttam Manohar Nakate, reported in (2005) 2 SCC 489

(iii) Regional Manager, Rajasthan SRTC v. Sohan Lal, reported in (2004) 8 SCC 218

(iv) M.P. Electricity Board v. Jagdish Chandra Sharma, reported in (2005) 3 SCC 401

(v) Hombe Gowda Educational Trust v. State of Karnataka, reported in (2006) 1 SCC 430

Last of the aforesaid decisions, i.e. Home Gowda Educational Trust, refers to all the earlier decisions mentioned above. It is therefore not necessary to refer to in detail the earlier decisions and it would be sufficient to briefly indicate the principles laid down therein.

7. In **V. Ramana v. A.P. SRTC** (supra), the Apex Court after relying upon large number of its earlier decisions held that the courts should not interfere with the administrator's decision unless it was illogical or suffered from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. The court, following Wednesbury principle should not go into the correctness of the choice made by the administrator and the Court should not substitute its decision for that of the administrator. In **Bharat Forge Co. v. Uttam Manohar Nakate (supra)**, the Apex Court held that the Industrial Court should not sit in appeal over the decision of the employer unless there existed a statutory provision in that behalf. Although Court's jurisdiction is wide but the same must be applied in

terms of the provisions of the statute. If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous factor and certainly not on a compassionate ground. In **Regional Manager, Rajasthan SRTC v. Sohan Lal** (supra), the Apex Court held that it is not the normal jurisdiction of the superior courts to interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct proved. In **M.P. Electricity Board v. Jagdish Chandra Sharma** (supra), the employee was found guilty of hitting and injuring his superior officer at the workplace which clearly amounted to breach of discipline in the organisation. The Court held that discipline at workplace is a sine qua non for the efficient working of the organisation, and when an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate.

8. In **Hombe Gowda Educational Trust v. State of Karnataka** (supra), after referring to all the aforesaid cases, the Apex Court in paragraph 30 of its decision held:

"30. This Court has come a long way from its earlier viewpoints. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed how discipline at the workplace/industrial undertakings received a setback. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to this Court was bound to follow the decisions of this Court which are applicable to the facts of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court

nor refuse to follow the same."

The Supreme Court specifically referred to the recent trend in the decisions of the Supreme Court which seek to strike a balance between the earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of the fast industrial growth in the country. It has been held that it would not be proper to allow an employee to break the discipline with impunity. In our view, the decisions of the Supreme Court unmistakably point out the due importance of discipline at workplace. The decisions in the case of Bharat Forge Co. (supra) and the Regional Manager, Rajasthan S.R.T.C. clearly lay down that Courts should not interfere with the quantum of sentence imposed by the employer unless it is wholly disproportionate to the misconduct proved and certainly not on compassionate ground.

9. The case at hand shows grave breach of discipline. Coming on work in an intoxicated state after consuming alcohol contrary to the rules of employment is a breach of discipline. The breach becomes graver in case of the appellant who was engaged in driving a heavy motor vehicle. Consequences of driving a bus in a drunken state can lead to an accident endangering not only loss of property but loss of

several innocent lives of the pedestrians on the road. If the employer decides to award stringent punishment for such misconduct, it cannot, by any stretch of imagination, be said to be shockingly disproportionate sentence stirring the conscience of the Court.

10. In our view, therefore, the Labour Court erred in coming to the conclusion that the punishment was shockingly disproportionate and the decision of the Labour Court is contrary to the current trend seen in the recent decisions of the Supreme Court. Consequently, the Industrial Court also erred in confirming the decision of the Labour Court and the learned Single Judge erred in declining to interfere in the discretion exercised by the courts below.

11. For these reasons, appeal is allowed and the impugned order is set aside. Application filed by the respondents for reinstatement of the respondent no.1 is dismissed. No order as to costs.

(R.M.S. KHANDEPARKAR, J.)

(D.G. KARNIK, J.)